

STATE OF MICHIGAN
COURT OF APPEALS

PHILIP YUNKER and BETTY YUNKER,

Plaintiffs/Counter Defendants-Appellants,

v

MADALYN BECKET,

Defendant/Counter Plaintiff-Appellee.

UNPUBLISHED

January 8, 2008

No. 274328

Roscommon Circuit Court

LC No. 05-725412-CH

Before: Fitzgerald, P.J., and Markey and Smolenski, JJ.

MEMORANDUM.

Plaintiffs appeal by right from the trial court's order requiring them to pay defendant's attorney fees and costs. The court concluded that plaintiffs' complaint and affidavits contained false information, or were not otherwise well grounded in fact, and thus that sanctions were appropriate per MCR 2.114(E), MCR 2.625(A), and MCL 600.2591. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case concerns a dispute over a strip of real property running along part of the boundary line between the parties' respective lots. Plaintiffs' driveway, originally gravel but later paved, extended into defendant's lot. In an attempt to claim a prescriptive easement for their encroachment, plaintiffs submitted a complaint and a pair of affidavits, all of which stated that the driveway was paved in approximately 1990 and that plaintiffs had a written agreement with defendant's predecessor in interest regarding the encroachment. Plaintiffs attached a copy of this purported agreement to their complaint.

At trial, however, the trial court noted that the testimony of one of the plaintiffs and that of another witness seriously contradicted plaintiffs' complaint and affidavits regarding the date the driveway was paved. The trial court also found, on the basis of extensive testimony regarding the mental incapacity of defendant's predecessor in interest, that the predecessor's signature on the purported agreement was a forgery.

A trial court's decision to award attorney fees is reviewed for an abuse of discretion. *Farmers Ins Exch v Kurzmann*, 257 Mich App 412, 422; 668 NW2d 199 (2003). A trial court's finding that a claim was frivolous will not be reversed unless clearly erroneous. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). "A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.* at 661-662.

Plaintiffs' brief on appeal makes no mention of the trial court's findings. Instead, plaintiffs' sole argument is that the statements of two of plaintiffs' witnesses regarding the width of the then-unpaved driveway could provide a reasonable basis for believing that the factual assertions underlying plaintiffs' legal position were true. The testimony of these witnesses, however, does not explain, much less excuse, the false information in plaintiffs' filings and the forged document attached to their complaint.

Plaintiffs fail to argue, let alone establish, that the trial court clearly erred in concluding from plaintiffs' reliance on plainly false documentation that they were pressing a claim not well grounded in fact. Consequently, plaintiffs have failed to establish that the trial court abused its discretion in awarding sanctions for a frivolous claim.

We affirm.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Michael R. Smolenski